Nos. 14663-14664-14665

United States
COURT OF APPEALS
for the Ninth Circuit

WILLIAM BENZ, et al., *Appellants,*

vs.

COMPANIA NAVIERA HIDALGO, S.A., *Appellee.*

M. D. MacRAE, et al., *Appellants,*

vs.

COMPANIA NAVIERA HIDALGO, S.A., *Appellee.*

JEFF MORRISON, et al., *Appellants,*

vs.

COMPANIA NAVIERA HIDALGO, S.A., *Appellee.*

APPELLEE'S BRIEF

Appeals from the United States District Court for the District of Oregon.

HONORABLE GUS J. SOLOMON, District Judge.

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JURISDICTIONAL STATEMENT

The jurisdiction of this Court is based upon 28 USCA §1291, these consolidated appeals being from three final judgments of the District Court of the District of Ore-

gon, a direct review of which may not be had in the Supreme Court under 28 U.S.C.A. §1252.

The jurisdiction of the Court below was based upon 28 USCA §1332, sub-paragraph (a) (2). It was stipulated in each of the pretrial orders that diversity of citizenship and an amount in excess of $3,000.00 exclusive of interest and costs were involved. The agreed facts there set forth show that the plaintiff, appellee here, was and is a corporation organized and existing under and by virtue of the laws of the Republic of Panama, and that the individually named defendants, appellants here, were citizens of various of the United States, mainly Oregon, and each a citizen and inhabitant of a State or country different from that of appellee (Tr. 14, 300, 346).

STATEMENT OF THE CASE

These are consolidated appeals from three judgments of the United States District Court for the District of Oregon, each of which awarded appellee (plaintiff) damages for the period during which it was deprived of the use of its vessel, the SS RIVIERA, because of picketing, first by appellants in No. 14663 from October 14, 1952, until enjoined by that court on November 26, 1952; next by appellants in No. 14664 from November 28, 1952, until enjoined by the District Court on December 8, 1952; and finally, by appellants in No. 14665 from December 10, 1952, until enjoined by the District Court on December 12, 1952.

Appellants previously appealed from the injunctions, *Benz et al. v. Compania Naviera Hidalgo,* 205 F. 2d

944. There this Court held that Appellee's claim for damages was "one which it has the right to prosecute in the court below wholly apart from any claim for an injunction." Finding the issues raised by the injunctions moot, the Court remanded with the admonition that "issues relating to the claim of damages . . . be tried by the parties as free from the effects of such injunctions, as if the the same had not been issued."

Upon receipt of the mandate in the District Court, the issues were made up by Pre-trial Orders containing certain agreed facts, the contentions of the parties and a statement of the issues thus framed (Tr. 13, No. 14663; Tr. 299, No. 14664; Tr. 345, No. 14665). The parties stipulated that the cases might be tried together, and that transcripts of the testimony and exhibits received at the time of the hearing prior to issuance of the injunction in each of the cases and also evidence received in two prior cases involving the SS RIVIERA might be offered with the same effect as if the evidence were presented anew. The trial was had before the Honorable Gus J. Solomon, who had heard all of the previous litigation concerning this vessel. After admission of evidence offered from the previous proceeding and some additional evidence relating to damages, the matter was taken under advisement. Subsequently the court rendered its opinion and entered Findings of Fact and Conclusions of Law (Tr. 237, No. 14663; Tr. 323, No. 14664; Tr. 369, No. 14680) and Final Decrees (Tr. 246, No. 14663; Tr. 335, No. 14664; Tr. 381, No. 14665) awarding appellee damages.

QUESTIONS PRESENTED

The principal questions of law which are involved in these appeals may be summarized as follows:

1. May a union picket a foreign owned and registered vessel at a port of the United States where its picketing is for the purpose of:

(a) Forcing the vessel's owner (appellee) to rehire alien former crew members who had refused to obey the lawful commands of the vessel's master and engaged in a sitdown strike? (The District Court said, "No," in all three cases.)

(b) Forcing the vessel's owner to enter into new articles with such former crew members for a shorter term and at higher wages than provided in the articles which were breached by the said desertion of the same former crew members? (The District Court said, "No," in all three cases.)

(c) Assisting another union, which had been enjoined from picketing, to accomplish the foregoing purposes? (The District Court said, "No" in Nos. 14664 and 14665).

(d) Forcing the vessel's owner to replace loyal officers who were signed on the vessel's articles with others who were members of the picketing union? (In No. 14664, the Court below held, contrary to appellants' contention, that this was *not* the purpose of the picketing; but that if it were, it would have been an unlawful purpose.)

2. May a union which pickets a vessel with the hope and intention that other workers will observe its picket line, rely on such observance by other workers as independent wrongful acts which prevent its own picketing from being a proximate cause of the idleness of the vessel? (The District Court answered in the negative.)

3. In a forum where an unincorporated association may not be sued as an entity, may it and its collective assets be bound by a suit brought against proper representatives of its members as a class? (The court below said, "Yes.")

STATEMENT OF FACTS

In addition to challenging the trial court's decisions above, appellants seek to reverse numerous findings of fact made below. While liberal in assigning error to findings, appellants' brief is notably stingy in discussing the evidence. We deem it appropriate, therefore, before proceeding to argument on the questions of law, to give the Court a more adequate statement of facts.

Background

Appellee, a Panamanian corporation, acquired the SS RIVIERA, an American-built Liberty type cargo ship, in March, 1952, and registered it at the Port of Monrovia under the Liberian flag.

Ariticles were opened at Bremen, Germany, where the vessel was delivered to Appellee, for a voyage from

Bremen for a period of two years or until the earlier return of the vessel to a continental European port. A crew of foreign nationals, mostly British and German, was signed on. The Articles are on a standard form used in the British merchant marine. By the Articles it was agreed that British Maritime Board conditions were to apply to wages and hours of employment. Wages to be paid to the crew members and the provisions to be furnished to crew members were set forth in the Articles. The wage rates specified therein for each crew member were equal to or higher than those customarily then paid for similar employment in the British Merchant Marine. The crew members further agreed by the terms of said articles to be obedient to the lawful commands of the vessel's master in everything relating to said ship and the stores and cargo thereof, whether on board, in boats, or on shore.

The SS RIVIERA proceeded from Bremen to New Orleans, Louisiana, in ballast; from New Orleans to India with a cargo of grain; from India to Japan with a cargo of coal; and from Japan, in ballast, to Portland, where it docked September 3, 1952. At Portland, the vessel was to undergo an insurance survey, make repairs indicated by the survey, provision and load a cargo of wheat, for the carriage of which to India it had been chartered.

The foregoing facts are all unchallenged findings of the trial court (Tr. 237, 239-40).

On September 7 and 8, 1952, American seamen from a vessel in the berth next to the SS RIVIERA came

aboard and discussed "conditions" with the RIVIERA's crew (Tr. 84, 157). One of them awoke the Master at 3:00 a.m., September 8th and asked him to come down to the crew's quarters and discuss "wages and conditions". (Tr. 157). On September 8 or 9, 1952, the crew were in possession of copies of a leaflet describing the successful negotiation by the Sailors' Union of the Pacific of new articles for foreign seamen employed aboard the Panamanian vessel SS MAKIKI (Tr. 178). This leaflet (Exhibit 12, Supp. Tr. 411-415) explains that other workers respected a picket line placed on that ship and "consequently the ship was deader than a mackerel." As a result, the SUP statement continues, "after haggling around the Company agreed to our terms," which it sets forth in detail showing wage increases of from 150% to 300% and reduction in the period of the articles.

On the morning of September 9, 1952, twenty-one members of the crew of the SS RIVIERA went on strike, refused to obey the lawful orders of the master and refused to leave the vessel, which they picketed. They were joined by three other crew members a few days later (Tr. 138, 240-41).

On or about September 15, 1952, the striking crew members executed cards designating the Sailors' Union of the Pacific as their collective bargaining agent (Tr. 17). These cards had been circulated with the MAKIKI leaflet (Tr. 178).

The sitdown strike continued to September 26, 1952, when the strikers left the vessel in compliance with a

decree entered in a possessory libel suit filed by appellee (Tr. 241).

On October 3, 1952, the strikers libeled the vessel for wages claimed due, alleging breach of their articles by reason of unseaworthiness of the vessel in several particulars. Appellee answered and cross libeled for forfeiture of wages admittedly earned and damages because of the strike (Tr. 19).

Prior to the trial of those causes, it was agreed between counsel with the approval of the court that neither party would be required to post a bond; that the marshal's keeper would be removed from the vessel and that appellee could use the ship for any purpose it wanted, the court and libelants' counsel accepting the assurance of appellee's counsel that the owner would not remove the vessel from the jurisdiction of the court without posting such bond as the court might require on notice of intention to remove it (Tr. 292-295).

Appellee also filed a libel against the Sailors' Union of the Pacific, Benz and others for inducing the crew to breach the articles (Tr. 19). The District Court promptly held a consolidated trial on the issues raised by the wage libel, appellee's cross libel and separate libel against the SUP. Most of the evidence then received together with the pleadings, findings, decrees and opinion of the court in those causes were introduced in the cases now appealed (Tr. 45-193; Supp. Tr. 395-473).

In his opinion in those causes the trial judge held that the vessel was seaworthy; that appellee had fulfilled all of its obligations to the crew under the articles; that

the purpose of the crew members in striking had been to achieve higher wages and shorter articles; that they had been encouraged to do this by American seamen; but that there was insufficient evidence to connect the instigators with the Sailors' Union of the Pacific (Supp. Tr. 456-470). He declined to forfeit the wages admittedly earned by the crew (Tr. 441). Appellee paid the decree for those the day it was entered (Tr. 20).

Appellants do not now deny the correctness of identical Findings in these cases that the vessel was seaworthy, that appellee in all respects lived up to the articles and that the crew members refused to obey lawful commands (Uncontested Findings, Tr. 240-41). They assign as error, however, the court's Finding in each of these cases as to the purpose of the crew in striking (Specification of Error 1, Br. 5); and, also, the court's Finding that appellee was not deprived of the use of the SS RIVIERA by virtue of the wage libel (Specifications of Error 3, 5 and 8, Br. 7, 8, 10).

No. 14663
The Sailors' Union of the Pacific

The Sailors' Union of the Pacific is a voluntary, unincorporated association which operates under rules and regulations by virtue of which its members act as an organized body (Tr. 238). It does not have locals, but operates as a single unit. Its officers consist of a Secretary-Treasurer, Port Agents and Patrolmen. The Secretary-Treasurer of the union is its principal executive officer. Harry Lundberg held that position at all times

involved in these cases and was a resident of the State of California. The appellants Benz and Williams were the Port Agent and Patrolman respectively of the union in The Port of Portland, Oregon (Tr. 237-238). They were elected to those positions by a vote of the entire union membership (Tr. 159). They were the only officers of the union in the State of Oregon. The membership of the Sailors' Union of the Pacific was upwards of five thousand men, many of whom were employed on ocean-going vessels so that it would have been impractical and impossible to join all of them as parties in this suit (Tr. 238). The Sailors' Union of the Pacific and its members have an economic interest in the working conditions and wages of seamen employed aboard vessels engaged in the grain charter trade between ports of the United States and the Orient (Tr. 243). Benz and Williams were sued individually and as representatives of all of the members of SUP (Tr. 238).

Appellants assign as error the court's Finding of Fact and Conclusions of Law that members of the union constitute a class and that this is a true class suit, their sole factual contention being that all of the members of The Sailors' Union of the Pacific were not sailing in the grain charter trade and, therefore, did not have identical interests in the subject matter of this suit (Specifications of Error Nos. 9 and 10, Br. 10-12).

The striking members of the crew were in contact with appellant Benz from the early days of their strike (Tr. 163). As already stated, about September 15 they all designated the Sailors' Union of the Pacific as their

collective bargaining agent. Benz talked with Lundberg by telephone about the strike frequently in September. Lundberg inquired as to the wages paid aboard the vessel (Tr. 167). On October 10, 1952, a meeting was held of the members of the Sailors' Union at the Port of Portland (Tr. 165). A formal resolution was adopted by the members at Portland and referred to the organization for action at all of the other ports on the Pacific Coast. This resolution was adopted by headquarters in San Francisco and concurred in by the branches at the other ports about October 14, 1952 (Tr. 415-416). The resolution (Exhibit 14, Supp. Tr. 416-420) recounts the same allegations of unseaworthiness, which the crew had made in their wage libel. (Compare Supp. Tr. 417-418 with Supp. Tr. 456-7.) It goes on to recite that the crew members had appealed to the SUP for help, authorized it to bargain for them, and remained steadfast and loyal to the union despite pressure from appellee, the German Consul, local immigration authorities and the court. Finally it authorizes the picketing thereafter conducted. As Benz put it, "We went on record to help this crew out until they have won their beef." (Tr. 165). Commencing on October 14th the Sailors' Union of the Pacific took over the picketing of the SS RIVIERA, which picketing had previously been carried out by members of the crew or other unidentified individuals affiliated with them. The picketing was conducted as the collective bargaining agent of the members of the crew (Supp. Tr. 415-416; Tr. 241-2).

At the hearing on order to show cause why an injunction should not be issued against the union's picket-

ing, appellants filed the affidavits of all of the striking crew members. Since these are virtually identical (Tr. 261), only one of them has been reproduced in the printed record (Supp. Tr. 472, Exhibit 35). The affidavits recite the designation of the Sailors' Union of the Pacific as the bargaining agent for the affiants and "that the picketing of the SS RIVIERA is for the purpose of giving full publicity to the dispute which now exists, and which has existed, between the operators of said vessel and a majority of the crew members employed on said vessel."

Appellants assign error to the court's Finding of Fact that the picketing by the Sailors' Union of the Pacific was for the sole purpose of compelling appellee to reemploy the crew members who went on strike and were discharged, at more favorable wage rates and conditions (Specification of Error 2, Br. 6).

The injunction was issued on November 26, 1952. It is admitted that appellee was able to proceed with the repairs of the vessel and preparation for loading its cargo immediately after the pickets were removed and that it continued to so work the vessel until November 28, 1952, when a new picket line was established by the Local 90 of the National Organization of Masters, Mates, and Pilots (Tr. 304-305).

No. 14664

Local 90, National Organization of Masters, Mates and Pilots A. F. of L.

The National Organization of Masters, Mates and Pilots of America is an unincorporated association whose members operate under the rules and regulations by virtue of which its members act as an organized body (Tr. 324). Local 90 of the NMMP is composed of masters, mates and pilots sailing on ocean-going vessels (Tr. 195). It is a coast-wide organization, having more than a thousand members, many of whom were employed on ocean-going vessels so that it would have been impractical and impossible to join all of them as parties to this suit (Tr. 324). Its officers include a president, a secretary-treasurer, its principal executive officers, and business agents or representatives at the Ports of Portland, Seattle and San Pedro. Local 90 has an economic interest in the working conditions and wages of masters and mates employed aboard vessels engaged in the grain trade (Tr. 331). The Business Agent or Representative at the Port of Portland is appellant M. D. MacRae. He is the only officer of the union in the State of Oregon (Tr. 195, 301, 324). He and certain of the pickets were sued both individually and as representatives of all the members of Local 90 (Tr. 325).

When Mr. MacRae read in the paper that the court had ordered the SUP to remove the pickets he called Mr. Benz. This was their conversation:

MacRAE: "How about this injunction that the court has put upon you?"

BENZ: "Yes, they put a restraining order against me and I guess it will be a temporary injunction, what it was."

MacRAE: "Well, what are you going to do about it?"

BENZ: "Nothing, we have to take our pickets off."

MacRAE: "O. K. Well then I can put pickets on the ship. There is no restraining injunction against me." (Tr. 197)

MacRae further testified, "We are affiliated with the A. F. of L. just the same as the SUP is concerned, and we always back one another." (Tr. 203).

When he found out that the ship was working and was going to sea, MacRae notified Local 90's members in Portland to come in for the purpose of discussing a picket line (Tr. 202). He also discussed it with other officials of Local 90, viz., Captain May, the president, and Captain Cross, the secretary-treasurer in San Francisco. They told him to use his own discretion; and he ordered the picket line (Tr. 196).

Prior to placing the picket line MacRae had made no demands upon the owners or agents of the vessel (Tr. 197-8). The court below in its opinion in the SUP case had emphaisized that the SUP was not seeking the jobs for its own members, but was seeking the reemployment of the former crew members. At the trial of this case MacRae insisted that the union put the picket line on to obtain employment for its men as master and mates aboard the SS RIVIERA (Tr. 198; Tr. 204). The

By-laws of the National Organization of Masters, Mates and Pilots provide that its membership shall be limited to personnel licensed by the United States (Exhibit 52, p. 4). The master and mates employed aboard the RIVIERA were all British nationals and members of British unions (Tr. 206). There is no evidence that they were licensed by the United States. The master and first and second officers testified that they were licensed by Britain (Tr. 108, 133, 178).

Appellants specify as error the court's finding that the picketing by Local 90, NMMP was for the purpose of compelling appellee to reemploy the crew members who went on strike, and who were discharged, at more favorable wage rates and conditions and for the purpose of helping the Sailors' Union of the Pacific in obtaining its objectives after it had been restrained from picketing. They also specify error in the Court's finding that the vessel's officers were not offered membership in Local 90 and were not eligible for such membership (Specification of Error 2, Br. 6-7).

The injunction was issued on December 8, 1952. It is admitted that appellee was able to proceed with the repairs of the vessel and preparation for loading its cargo immediately after the pickets were removed, and that it continued to work the vessel until December 10, 1952, when a new picket line was established by the Atlantic and Gulf District of the Seafarers International Union, A. F. L. (Tr. 351).

No. 14665

Atlantic and Gulf District S.I.U., A. F. of L.

The Atlantic and Gulf District, S.I.U., A. F. of L. is a voluntary unincorporated association operating under rules and regulations by virtue of which its members act as an organized body (Tr. 371). Appellant Morrison was the Northwest Representative of the Atlantic and Gulf District with headquarters in Seattle, Washington. The chief executive officer of the Atlantic and Gulf District is a Mr. Hall whose headquarters is in Brooklyn, New York (Tr. 213-14). The Atlantic and Gulf District had a membership upwards of 5,000 men, many of whom were employed on ocean going vessels, so that it would have been impracticable and impossible to join all of them as parties in this suit (Tr. 371). This union also has an economic interest in working conditions and wages of seamen employed on vessels engaged in the grain trade (Tr. 378). Appellants Morrison and Johnson were sued individually and as representatives of all members of the Atlantic and Gulf District (Tr. 371).

The Atlantic and Gulf District and the Sailors' Union of the Pacific are affiliated organizations in the Seafarers' International Union. Harry Lundberg is the President of the Seafarers' International Union as well as Secretary-Treasurer and chief executive officer of the Sailors' Union of the Pacific (Tr. 214-215).

Morrison first learned of the RIVIERA on December 9, 1952, when he received a telephone call from

Lloyd Gardner, one of his superior officers in the Atlantic and Gulf District. The call was from the San Francisco office of the Atlantic and Gulf District (Tr. 216) which is located in the Sailors' Union of the Pacific Building in that city (Tr. 222-23).

Having been asked to look into the matter, Morrison came to Portland bringing with him appellant Johnson for the purpose of establishing a picket line if one were needed (Tr. 223, 228). On arriving in Portland, he first contacted Mr. Benz of the Sailors' Union of the Pacific. At Benz' suggestion, he had a conference with Tanner & Carney, the attorneys who had represented the Sailors' Union of the Pacific, and the Masters, Mates and Pilots as well as the crew members in preceding litigation (Tr. 216-17).

In its opinion in the MacRae Case, the Court had emphasized that there were no jobs open for masters or mates on the vessel and had also emphasized that Local 90 made no attempt to contact the owners about jobs prior to establishing its picket line. Appellant Morrison attempted to contact the master of the vessel, but not finding him aboard ship or at the offices of the ship's agents, he quickly gave up and established a picket line for the Atlantic and Gulf District (Tr. 218-19), contending that it wished the jobs for its members and wished to raise the wage rates paid aboard the vessel (Supp. Tr. 480). The evidence showed that the chief officer of the Riviera had left Portland for Vancouver, B. C. on December 7, 1952, to sign on needed crew members. He reported a full crew was signed on December 10, 1952 (Tr. 230-31, 233).

Appellants specify as error the Court's finding that the picketing by the Atlantic and Gulf District was for the purpose of compelling appellee to re-employ the crew members who went on strike and who were discharged, at more favorable wage rates and conditions and for the purpose of helping the Sailors' Union of the Pacific in obtaining its objectives after it had been restrained from picketing (Specification of Error 2, Br. 6-7).

It is admitted that the shore workers returned to work immediately after the removal of the picket line and completed loading and repairs (Tr. 351).

SUMMARY OF APPELLEE'S ARGUMENT

There is ample evidence to support the findings of the Court below that the crew of the SS RIVIERA went on strike to obtain higher wages and a shorter term than provided in the articles under which they were bound to the vessel; that the SUP was picketing as their collective bargaining agent and for the sole purpose of forcing appellee to rehire the mutinous crew upon the terms which they had sought; and that Local 90 of the Masters, Mates and Pilots and the Atlantic and Gulf District SIU undertook the picketing, after the SUP had been enjoined, for the sole purpose of forcing appellee to rehire the striking former crew members on terms more favorable than provided in the articles which they had breached and to assist the SUP in realizing that objective.

A seaman under valid articles has no right to bargain concerning, wages, hours and working conditions, either himself or through a so-called collective bargaining agent. Because of the necessities of maritime discipline and in the light of the special protection surrounding the relationship of a seaman to his ship, it has been uniformly held that there is no right to bargaining, individual or collective, during the term of articles. The picketing in these cases was therefore for an unlawful purpose. The unlawful purpose doctrine is not confined to cases in which picketing is for the purpose of forcing an employer to commit an illegal act. It also applies to cases in which the picketing has an objective which is condemned by public policy, as well as to those cases in which the picketing is in support of the breach of a valid labor agreement.

The National Labor Relations Act as amended by the Taft-Hartley Act has no applicability to these cases. The relationship of a seaman under articles to his ship is governed by the paramount maritime law rather than general labor legislation; and the rights to strike and picket guaranteed by general labor legislation have no applicability to seamen during the period of articles. Moreover, in these cases we are dealing with a foreign crew serving aboard a foreign vessel which is owned by a foreign shipowner. The labor legislation of the United States is not intended to govern labor relations on a tramp vessel such as the RIVIERA which calls only briefly at ports of the United States.

The Norris-LaGuardia Act is inapplicable to the facts of these cases and was not a bar to the injunctions form-

erly issued by the District Court. That Act was intended to prevent injunctions in labor disputes, and had for its purpose the promotion of collective bargaining. It has no applicability here both because of the inappropriateness of collective bargaining to the situation of seamen bound to a vessel by valid shipping articles and also because it was not intended to apply beyond the territorial limits of the United States and to effect a labor situation on a foreign tramp vessel owned by a foreign owner and with a foreign crew. In any event, however, the propriety of the injunctions under the Norris-LaGuardia Act is not now before this Court. Appeals from those injunctions were formerly dismissed with instructions to try the damage actions as if they had not been issued. Appellants cannot now claim that there was no jurisdiction to award damages because of a lack of equity jurisdiction, since they never moved in the court below for trial of these cases as actions at law or before a jury and, therefore, have in no way been prejudiced by the court's hearing of the cases.

The District Court correctly found that picketing by appellant unions was the proximate cause of the vessel's idleness, and that appellee was not deprived of the use of its vessel during the period of picketing by any technical custody of the United States Marshal or by the lack of a crew aboard the vessel. The acts of shore employees in refusing to cross the picket lines of appellants were not independent intervening wrongful causes of appellee's damage. Rather they are the very acts which appellants hoped and intended would follow from their picketing.

Appellant unions are each unincorporated labor organizations whose members have common economic interests which they have banded together under rules and regulations to promote as an organized body. The court below correctly held that they constituted classes having sufficiently identical interests in the subject matter of these suits to be sued in a class action. It is admitted that their members were too numerous to be all joined individually as defendants and that appellee served all the local officers of those unions, individually and as representatives of the entire membership. These are true class actions and the class action is a proper proceeding in which to recover damages from a union for its torts. While individual members of the unions not personally served in these cases are not bound by the judgments to the extent that execution could issue against their personal assets, the court below correctly directed execution against common assets of the unions as well as those of the individual members who were personally served.

ARGUMENT

THE PURPOSE OF THE PICKETING

Answer to Appellants' Specifications of Error 1 and 2 (Br. 5, 6)

Appellants say the court below erred in determining that both the strike by some of the crew members of the RIVIERA and the subsequent picketing by appellant unions was for the purpose of requiring appellee to grant the rebelious crew new articles of shorter duration and at higher wages than had been agreed to by them. We

shall not prolong the brief by repetition of all the evidence already set forth which so fully sustains these findings, but rest on the following brief summary.

It is not denied that the vessel was seaworthy and that appellee fulfilled its obligations to the crew. Nor can it be denied that most of appellants' picketing occurred after those facts had been judicially determined between the crew and appellee in a joint proceeding to which the SUP was an interested party. In view of this, how can appellants now contend that the court erred in its companion finding that the allegations of unseaworthiness were only a sham covering for the real aim of different articles? In view of the interested participation of the SUP in the prior litigation which first produced that finding and the position of all the unions as agents for the strikers, appellents should be collaterally estopped to deny its bindng effect here. 30 Am. Jur., "Judgments" §248, p. 977. But, whether bound or not, they cannot deny the evidence of agitation for new articles by circulation of the inflammatory MAKIKI leaflet and its conjunction with the start of the sit-down strike. Nor can they explain the persistence of the crew after their allegations of unseaworthiness were determined false, as shown by their affidavits filed in one of these subsequent cases.

As for the purpose of the SUP, suffice to say its own evidence clearly supports the challenged finding. The crew's affidavits, which it filed, and the resolution which it adopted state that purpose. Benz' very revealing interpretation of the resolution, it will be remembered, was

solely that "we went on record to help this crew out until they have won their beef."

The NMMP and SIU denied representation of the crew; but the evidence clearly shows that they were just backing up the crew and SUP in their aim. The Court had before it these unions' lack of any evidenced interest in the RIVIERA for the nearly three months it was in port prior to the first injunction; the affiliations of the unions with the SUP and their proven policy of supporting it; the hasty conferences between their officials and those of the SUP; and the window dressing adaption of action to language of the court's opinions. The fact that counsel for appellants represented the striking crew members as well as all of the unions involved can hardly be overlooked in a discussion of the purpose of the picketing, although we recognize that there is no impropriety about their having more than one client.

THE PURPOSE OF THE PICKETING WAS UNLAWFUL

Answer to Appellants' Specifications of Error 7, 11 and 12 (Br. 9, 12-13) and Argument (Br. 15-28)

There is no question but that the striking crew members had entered into valid articles which bound them to the vessel for a period of two years or until the vessel returned to a continental European port. Appellants have abandoned any contention that there was any justification for the crew in refusing to comply with their contract and to obey the lawful orders of the master. The courts of the United States have furthermore consistently held that there is no right to strike or to bargain

collectively in the crew during the existence of the articles.

In *Rees vs. U. S.,* 95 F. 2d 784, the Court of Appeals for the Fourth Circuit reviewed the many protections both by legislation and the general maritime law which surround the employment relationship of seamen on the vessel on which they serve. The court pointed out that the safety of lives and property aboard ship depend upon a high discipline which is destroyed by strikes and refusal to obey orders of the master. It pointed to the dependence of the seaman upon his vessel and that neither the shipowner nor the seaman is in a good bargaining position in a foreign land, whose shores may be inhospitable to the crew and unproductive of any substitutes for them. For these reasons the court stated:

> "When articles are signed by a crew for a voyage, all bargaining, individual and collective, is ended for the duration of the voyage. A contract is made, binding both owner and seaman, that is lawful, if the articles comply with the statutes, and should be lived up to scrupulously." (95 F. 2d 784, at 792)

This question has also been passed upon by the United States Supreme Court in *Southern Steamship Company vs. NLRB,* 316 U.S. 31, 86 L. Ed. 1246, 62 S. Ct. 886, and by the Court of Appeals for the Fifth Circuit in *Peninsular & Occidental Steamship Co. vs. NLRB,* 98 F. 2d 411. In each of these cases the court held that seamen who had gone on strike while under articles were not entitled to reinstatement. In each case the NLRB had found the shipowner guilty of an unfair labor practice in discharging the striking crew members and order-

ed reinstatement of the men in order to effectuate the purposes of the National Labor Relations Act. Nevertheless the courts held that reinstatement under these circumstances, despite the public policy of the Act, would not be enforced to the detriment of maritime discipline.

Since neither the crew nor its representatives had any right to negotiate new or different terms of agreement, there obviously could be no labor dispute involved in this case. A labor dispute is one which involves wages, hours and working conditions and representation for collective bargaining. Any such rights had been terminated by the execution of the articles which each of the striking seamen had signed and which constituted a contract between himself and the shipowner.

Appellants contend that their picketing, even though its purpose was to compel appellee to re-hire the striking crew members under articles more favorable to them than those which they had breached, was not for an unlawful purpose because it did not require the appellee to commit an illegal act. Appellants cite many cases holding that picketing is for an unlawful purpose when it is intended to compel the employer to do an illegal act. We do not disagree with those cases. Appellants make no reference, however, to numerous decisions in which picketing was held to be for an unlawful purpose even thought the employer was not being coerced into doing an illegal act.

The courts have declared that picketing is improper when its purpose is contrary to public policy and good

morals. In *Schwab vs. Moving Picture Machine Operators, Local No. 159,* 165 Ore. 602, 109 P. 2d 600, the Supreme Court of Oregon declared picketing unlawful where the purpose of the picketing union was to obtain a monopoly of labor by requiring the employer to discharge present employees and hire members of the union in their place. The employer was not being required to violate any statute. The purpose was, however, held to be unlawful because of the union's monopolistic aim. Incidentally, this case clearly shows the trial court's correctness in its alternative conclusion in No. 14664 that picketing by the NMMP to require appellee to replace its officers with members of that union would be for an unlawful purpose.

In *International Brotherhood vs. Hanke,* 339 U. S. 470, 94 L. Ed. 995, 70 S. Ct. 773, the United States Supreme Court upheld an injunction granted by the Supreme Court of Washington against picketing for an unlawful purpose, namely requiring partners who conducted their business without any employees to join the union. It was not illegal for the partners to join the union, but the court found that the aim of the union itself was contrary to public policy as announced by the courts. Likewise, in *Rees vs. U. S.,* supra, *Southern Steamship Co. vs. NLRB,* supra, *Peninsular & Occidental Steamship Co. vs. NLRB,* supra, the collective action of the seamen and their supporting unions were not for the purpose of requiring the shipowner to do any illegal act. The shipowner could have complied with their demands without violating any law, but the courts nevertheless

held the purpose was contrary to the public policy governing seamen under articles.

Appellants also ignore a long line of cases holding that picketing is for an unlawful purpose where it seeks to set aside, or invalidate, a collective bargaining agreement in effect between the employer and the picketing workers or union. See the extensive note in 2 A.L.R. 2d 1278, where at page 1281 it is said:

> "As a general proposition, the right to strike and picket, though otherwise recognized, cannot be exercised during the life of a valid labor agreement which fails by its terms to preserve such rights."

The articles of the "RIVIERA" were a labor agreement which included substantially all of the terms and conditions usually found in labor agreements. The articles included specifically the British Maritime Board regulations and the scales of pay and working conditions established through collective bargaining by the British maritime unions. The articles contained a provision more sweeping than the usual no-strike agreement, to-wit, the agreement on the part of each crew member that he would obey the lawful orders of the master. Breach of such an agreement involves more serious consequences than the breach of a collective bargaining agreement ashore.

Moreover, the vessel's obligations under the articles continued with respect to the non-striking crew members and the shipowner could not have terminated the articles and entered into new articles providing for a shorter term and different conditions without the con-

sent of the loyal crew members. It may be argued that the SUP could have negotiated an agreement so favorable that the loyal crew members would have agreed to a termination of the articles. This is, however, mere speculation and there is no evidence as to the willingness of the loyal crew members to surrender their right or whether a shorter term than provided for in the articles would have been acceptable to them.

The unlawful purpose of the picketing on the part of the striking crew members is plainly established. In *Rees vs. U. S.,* supra, the striking members of the crew of an American ship were indicted for violation of United States Criminal Code, Section 292, 18 USCA, Section 483 for acts comparable to those of the crew of the RIVIERA. The Court of Appeals sustained their conviction of the violation of the Criminal Code in striking and refusing to obey the lawful orders of the master.

In *Southern Steamship Co. vs. NLRB,* supra, a strike of the crew because of the refusal of the shipowner to bargain with a union was held to be mutiny. The evidence clearly indicates that appellants aided and abetted the mutinous crew of the RIVIERA and attempted to secure for the mutinous crew a better contract as a reward of their unlawful conduct. The Court of Appeals for the Fifth Circuit in *Peninsula & Occidental Steamship Co. vs. NLRB,* supra, held that a reinstatement of the striking crewmen in itself would have rendered the vessel unseaworthy.

Picketing by appellants was in support of an illegal strike by the seamen. It was nothing more than an at-

tempt by such seamen to gain through appellants as their representatives that which they themselves could not demand. Such purpose is clearly unlawful.

Appellants admit that picketing is not protected "free speech" where it is for an unlawful purpose (Br. 18).

THE TAFT-HARTLEY ACT IS INAPPLICABLE TO THESE CASES

Answer to Appellants' Specification of Error 6 (Br. 9) and Argument (Br. 19-23)

The vessels and crews involved in the *Rees, Southern Shipping Co.* and *Peninsula and Occidental* cases, supra, were American, yet the courts expressly held that the right of labor to strike and picket as guaranteed by the National Labor Relations Act is not applicable even to an American crew aboard a United States flag vessel during the continuance of valid articles. It would appear that the paramount maritime law defining the rights and obligations as between shipowner and crew governs over general labor legislation such as the Taft-Hartley Act. Counsel for appellants ignore this in their lengthy discussion of preemption.

Moreover, in the cases before this Court we are not dealing with an American vessel and crew, but with a foreign flag vessel, a foreign shipowner and a foreign crew.

The RIVIERA was a tramp freighter which touched ports of the United States irregularly for brief periods. If the contractual relationship between the shipowner and his crew while under valid articles is to be sub-

jected to the laws governing labor relations in every foreign port, chaos is certain to ensue. If the rights of the shipowner and of his crew are to vary from port to port, it is plain that foreign commerce will be disastrously impeded.

The RIVIERA was foreign territory. The members of the crew were foreigners, predominately German and British. Their articles governed their relationship upon the high seas as in the ports of every foreign country, all of which demonstrates the inapplicability of local labor law and particularly the National Labor Relations Act as amended.

The National Labor Relations Board has heretofore had this problem directly before it and has held that it has no jurisdiction under such circumstances to determine the collective bargaining agent for the crew of a foreign vessel. *Sailors' Union of the Pacific,* Case No. 20, R.C. 809, May 1, 1950, C. C. H. Labor Reports, 1950-51, NLRB Decisions, Par. 1,081.

THE VALIDITY OF THE PRIOR INJUNCTIONS UNDER THE NORRIS-LaGUARDIA ACT AND THE EQUITY JURISDICTION OF THE COURT BELOW HAVE NO RELEVANCE TO THE JUDGMENTS NOW BEFORE THE COURT

Answer to Appellants' Specification of Error 6 (Br. 9) and Argument (Br. 23-28)

Appellants argue that the prior injunctions should not have been issued because a labor dispute existed within the meaning of the Norris-LaGuardia Act; and that, since the court could not grant that equitable relief, it had no jurisdiction to award damages.

In the first place we contend that the Norris-LaGuardia Act was no bar to the issuance of the injunctions in these cases. That Act declares its purpose to be that the workers shall:

> ". . . be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." (29 USCA §102)

But as already pointed out here, collective bargaining and designation of representatives for that purpose have no applicability to seamen during the term of the articles by which they contracted with the shipowner. This case is analogous in that respect to the case of *U. S. vs. United Mine Workers of America,* 330 U.S. 258, 91 L. Ed. 884, 67 S. Ct. 677. In delivering the opinion of the Court, Chief Justice Vinson stated,

> "The purpose of the Act is said to be to contribute to the worker's 'full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives . . . for the purpose of collective bargaining . . .' These considerations on their face, obviously do not apply to the Government as an employer or to relations between the Government and its employees." (330 U.S. at 274, 91 L. Ed. at 903)

The Supreme Court therefore held in that case that the Norris LaGuardia Act did not prevent an injunction against the Mine Workers' picketing.

Moreover, it would seem that, like the Taft-Hartly Act and other national labor legislation, the Norris-LaGuardia Act was not intended to influence labor relations between a foreign crew and foreign shipowner for performance of services aboard a foreign tramp vessel. Although not specifically stated in every act which it passes, Congress must be presumed to be legislating for the United States and not for the world.

But in any event the propriety of the former injunctions is of no concern in these proceedings. This Court formerly held that the appellee had a right to prosecute its claim for damages without reference to whether those injunctions were valid. Upon the remand of the case, appellants answered and stipulated for trial of the cases before Judge Solomon. At no time did they move to transfer the case from the equity side of the court to the law side of the court or for trial by jury. Under the unified federal procedure as set forth in the Federal Rules, appellants clearly waived any right which they might have had to a jury trial and are estopped to claim that the court lacked jurisdiction to hear the case. As stated by Professor Moore,

> "When it is apparent to the defendant that on his theory all or certain issues of the case are legal, despite the characterization given by the plaintiff, the defendant must disclose his position by making demand for jury trial within the time allowed by Rule 38 (b) and a failure to do so constitutes waiver of any right to jury trial the defendant may have had." (5 Moore, Federal Practice, 2d Ed., 38.17, p. 163)

This unfounded aside in appellants' argument does not deserve serious consideration.

THE PICKETING WAS THE PROXIMATE CAUSE OF APPELLEE'S DAMAGE

Answer to Appellants' Specifications of Error 3, 5, and 8 (Br. 7, 8, 10) and Argument (Br. 28-33)

Appellants contend that appellee could not have used its vessel during the period of the picketing both because it was in the custody of the court and because there was no crew aboard. They also contend that the acts of shore employees in refusing to cross the picket line were intervening independent and wrongful acts which prevented the picketing itself from being a proximate cause of the vessel's idleness. It is well to note that they do not challenge the court's finding that appellees suffered damage through the idleness of the vessel in the amount of $900 per day, nor the total amount of the damages fixed by the court in each case (Tr. 244, 332, 377).

Appellants offered no evidence that the vessel was in the custody of the Marshal, although appellee specifically denied appellants' contention that it was in the Marshal's custody (Tr. 31). This was stated as an issue in the Pre-Trial Order (Tr. 36). The facts as already stated are that, by stipulation between counsel for the libelant crew members, who are counsel for appellants here, and the owners of the RIVIERA, the ship was released from the custody of the Marshal, and it was agreed that its owners could do with it what they wanted. This was done upon the assurance of counsel for the owners that the vessel would not depart from the jurisdiction of the Court without posting such bond as the Court might require (Tr. 292-295).

We are at a loss to understand the significance of appellants' argument that no liens could attach to a vessel in *custodia legis* (Br. 32). But in any event that is not the case here, for as stated in 2 Benedict on Admiralty, 6th Ed., §298, p. 382:

> "If the arrest is merely formal, and the vessel, by consent of the parties is permitted to proceed about her business in the possession of one or more of the parties, instead of being retained in the possession of the Marshal, then liens can arise in the usual manner despite the fact of the seizure."

Admittedly during most of the period of picketing, the RIVIERA was short about 25 men of the full crew. But there was no need for a crew until the vessel was ready to sail. This was admitted by appellant MacRae (Tr. 203). There was testimony that a crew could have been obtained within less than three days if that were required (Tr. 212). Finally there was evidence that a crew was easily obtained within three days when the master determined it would be needed (Tr. 230-231). Appellee was under a duty to mitigate damages, and it would have been ridiculous for it to have obtained a crew to sit idle on the vessel, running up its damages, during the period of picketing.

The conclusive answer to these arguments of appellants is in the admitted fact that appellee was able to proceed with repair and loading of the vessel during the periods November 26th - 28th and December 8th - 10th, 1952, the intervals between picket lines, and that the vessel, completed repairs, loaded and sailed shortly after the last picket line was withdrawn (Tr. 351).

Appellants argue that the RIVIERA was idled as a result of the refusal of shore employees to cross the picket lines set up by appellants. With this we agree. They argue, as a matter of law, that these acts of shore employees were independent, intervening causes of damage so that the picketing itself could not be held a proximate cause. To sustain this position, they argue that the acts of the shore employees were themselves wrongful and illegal acts. This strained argument is necessary, for, as they admit, if the refusal, of the shore employees to cross the picket line was innocent and legal, then it could not operate as an independent or intervening wrong or cause of appellee's damage (Br. 29-30).

In support of the argument that the shore employees acted illegally and wrongfully, appellants cite Judge Fee's opinion in *Montgomery Ward and Company, Inc. vs. Northern Pacific Terminal Company et al.,* 32 L.R.R.M. 2386 (D. Ore. 1953). Nothing in that case sustains the argument made. That was a case in which the plaintiff sued various common carriers for breach of their statutory and common law duties to provide service to plaintiff as a member of the public. The court held that a common carrier was not relieved of its duty to provide service by the fact that the person requesting the service was subject to a picket line, at least in the absence of clear evidence that the carrier had done everything within its power to provide such service. Nowhere in the court's opinion did it state that employees of the public carrier who refused to cross a picket line thereby committed an illegal act. Indeed, the court

emphasized the fact that the carriers made no serious effort to require their employees to cross the picket line.

In this case, neither the stevedores and other ship fitting and repair companies nor their employees were under any statutory or common law duty to provide appellee with any services. There is no evidence that there was even a contractual duty on the employers to furnish the services contracted for in the fact of a picket line. Certainly it cannot be said that there was any legal duty of the employees of those contractors to cross the picket line so that breach of that duty could be declared an illegal or wrongful act.

Appellants also cite *NLRB vs. Rockaway News Supply Co.* (CA-2 1952), 197 F. 2d 111, *aff'd* 345 U.S. 71, 97 L. Ed. 832, 73 S. Ct. 519; *NLRB vs. Illinois Bell Telephone Co.* (CA-7 1951), 189 F. 2d 124, *cert. den.* 342 U.S. 885, 96 L. Ed. 663, 72 S. Ct. 173. They are correct in stating that those cases hold an employer may discharge an employee who refuses to perform his duty to the employer when that involves crossing a picket line. But this does not make the acts of the employees "illegal"; and nothing in those cases so holds. On the contrary, in the *Rockaway News* case the court specifically held:

> "In considering this question we accept the contention of the Board that the refusal of an employee to cross a picket line of another union than his own at another plant than that of his employer is an exercise of 'the right to * * * assist labor organizations * * * and to engage in other concerted activities for the purpose of * * * mutual aid or protection' which is expressly guaranteed by Section 7 of the Act." (197 F. 2d 111 at 113)

The trouble comes from appellants' loose use of the words "illegal" and "wrongful". "Illegal" normally means in violation of a statute. "Wrongful", we take it, means tortious. What statute did the shore employees violate to make their conduct illegal? What duty to appellee did they breach to make them liable in tort?

The acts of the shore employees in refusing to cross the picket lines were such as would not only naturally and probably follow from the picket line, but were the acts specifically hoped for and intended to follow from the picket line. The picketing was the proximate cause of plaintiff's damage.

THE DISTRICT COURT CORRECTLY ENTERED JUDGMENT AGAINST APPELLANT UNIONS AND THEIR MEMBERS AND PROVIDED FOR EXECUTION AGAINST PROPERTY HELD BY THE UNIONS

Answer to Appellants' Specification of Error 9 and 10 (Br. 10-12) and Argument (Br. 33-36)

Appellants correctly state that Oregon has not yet adopted the rule of the Coronado case (*United Mine Workers of America vs. Coronado Coal Co.* (1922), 259 U.S. 255, 66 L. Ed. 975, 42 S. Ct. 570, 27 A.L.R. 762). They are also correct in stating that the capacity of appellant unions to sue or be sued should be determined under the law of Oregon.

While it has not adopted the rule of the *Coronado* case, Oregon has allowed unions to sue and be sued by means of the class suit for many years. See for example the recent decision of the Oregon Supreme Court in *Lonsford, et al vs. Burton, et al.* (1953), 202 Ore. 497,

P. 2d . . . . In that case the defendants were sued as representatives of Local 72 of the International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America. Although the named defendants filed answer "on behalf of themselves only and not on behalf of any or all other members", the court nevertheless stated, "We shall treat the answer of the named defendants as an answer made on behalf of the International." (202 Ore. 497, at 511-512).

The class suit is specifically provided for by statute in Oregon:

> "When the question is one of a common or general interest of many persons, or when the parties are very numerous, and it may be impractical to bring them all before the court, one or more may sue or defend for the benefit of the whole." (ORS § 13.170, formerly O.C.L.A. § 9-106)

No Oregon case holds that a union may not be sued or its assets reached through the medium of a class suit. *Cousins vs. Taylor,* 115 Ore. 472, 239 Pac. 96 (1925), cited by appellants is not at all in point. That was a suit brought against fifteen individual members of an unincorporated association. No attempt was made to reach the assets of the association or to obtain a judgment against other members of the association not personally served.

In other states the right to recover damages from a union based upon service on individuals as representatives of all of its members has long been well settled. See for example *St. Germaine et ux. vs. The Bakery and Confectionary Union No. 9 of Seattle et al.* (1917), 97

Wash. 282, 166 Pac. 665. That was a case identical with this in that the plaintiff had sought an injunction and damages for picketing.

In *Tunstall vs. Brotherhood of Locomotive Firemen and Enginemen et al.,* 148 F. 2d 403 (1945, C.C.A. 4), the plaintiff brought suit against the union for discrimination on account of race in establishing job eligibility, naming it as an entity and also naming one of the officers of a local lodge as a representative of all of the members of the union. The court held that while service on the union as an entity was not adequate, the suit could be treated as a class suit and recovery had against the union. One of the questions considered by the court in that case was: "May a class suit be brought against an unincorporated association in such a way as to bind the Association?" Chief Judge Parker, speaking for the court, answered in the affirmative. He pointed out:

> "The right to bring a class suit to enforce the liability of an unincorporated association existed long prior to the adoption of the Federal Rules of Civil Procedure." (148 F. 2d 403, at 404)

He also stated:

> "Even in a state like West Virginia which adheres to the common law rule that an unincorporated labor association may not be sued as an entity, see Milam v. Settle, W. Va., 32 S.E. 2d 269, such an association may be sued in the state courts by naming as parties and serving individually some of the members composing the association." (148 F. 2d 403, at 405)

Subsequently, a judgment for $1,000 in damages in favor of plaintiff against the Brotherhood was affirmed,

Brotherhood of Locomotive Enginemen vs. Tunstall, 163 F. 2d 289.

Other recent decisions have established beyond doubt that an unincorporated labor organization may be sued for its torts through the medium of the class suit. See *Montgomery Ward and Co., Inc. vs. Langer et al.,* 168 F. 2d 182 (1948, C.C.A. 8) (Libel published in union newspaper); *Ketcher et al. vs. Sheetmetal Workers International Association et al.,* 115 F. Supp. 802 (1953, E.D. Ark. W.D.) (Conspiring to deprive plaintiff of union workers and to bring about breach of collective bargaining agreement); *Pascale et al. vs. Emery et al.,* 95 F. Supp. 147 (1951, D. Mass.) (Libel published in union newspaper). Professor Moore in his work on Federal Practice, Vol. 2, page 2235 ff., cites suits against unincorporated associations as typical of what he calls the "true class suit". In discussing the affect of a judgment in a true class suit he states,

> "In an action to recover damages against an unincorporated association, brought as a class action by naming representatives of the association as defendants, the judgment should be binding on the association and also, insofar as the action asserts individual liability of the members, it should be binding on the individuals named as defendants and duly served with process, but not upon other individual members." (3 Moore, Federal Practice (2d Ed.), §23.11 at p. 3465)

In *Montgomery Ward and Co. vs. Langer,* 168 F. 2d 282, the suit was originally brought against 80 individual defendants and two named unions, the individuals being served as such and as representatives of all of the mem-

bers of the unions. Motions were filed alleging that the unions could not be sued in their own name, and that diversity did not exist as between plaintiff and all of the defendants. Plaintiff then dismissed the action as against the two unions and eight of the individual defendants, so that at the time the case was before the court only individuals were named as defendants. Nevertheless, the court held that this was a class suit and that the court had jurisdiction over the union as a class.

The concurring opinion of Judge Johnsen in that case holds no more than that a judgment in a class suit cannot bind the personal assets of individual members of the class not made parties personally to the suit. The quotation from his opinion in appellants' brief (Br. 35) is not a single statement as it is made to appear. Rather, appellants have omitted large portions of his opinion which appear between the quoted paragraphs. Among the statements which they omit are the following:

> "More than mere class membership or association representation would therefore substantively be necessary to establish a liability collectible out of individual or personal estate." (168 F. 2d 182, at 189)

> "Conceivably, such an adjudication could be a helpful step in the process of ultimately reaching any fund existing for general union purposes, where the union had been guilty of a legal wrong." (168 F. 2d 189, at 190)

The substantive right to reach the assets of an unincorporated association where it has been guilty of a legal wrong is settled in all jurisdictions that have considered the question. The only point of difference lies in the

procedure to be followed, some following the principle of the *Coronado* case that the union may be sued in its own name as an entity, while others require that all of the members be joined in a class suit. The latter was done here and is proper under the law of Oregon.

We are at a loss to understand appellants' argument that the members of each union did not constitute a class, since all of them were not sailing on vessels in the grain trade. The Admitted Facts and uncontested Findings are that the members of each union constituted an organized body and that each union and its members had common economic interests. Moreover, the evidence showed that the actions taken by the unions in picketing were not isolated actions of a few members but were undertaken only after consultations among the unions officers and, in the cases of the SUP and Local 90, NMMP, after meetings of the membership had been held. Sufficient identity of interest is certainly established by these facts.

CONCLUSION

The evidence clearly established that appellants attempted to coerce appellee into terminating the ship's articles, an agreement lawfully entered into, and rehiring the mutinous crew members under a more favorable agreement. The means used by the union in attempting to accomplish these purposes resulted in substantial damage to appellee and the District Court has ordered appellants to respond in damages.

The judgments of the District Court should be affirmed.

Respectfully submitted,

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